

Title 9-A: MAINE CONSUMER CREDIT CODE

Article 1: General Provisions and Definitions

Table of Contents

Part 1. GENERAL PROVISIONS.....	3
Section 1-101. SHORT TITLE.....	3
Section 1-102. PURPOSES; RULES OF CONSTRUCTION.....	3
Section 1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.....	4
Section 1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL.....	4
Section 1-105. SEVERABILITY.....	4
Section 1-106. ADJUSTMENT OF DOLLAR AMOUNTS (REPEALED).....	4
Section 1-107. WAIVER; AGREEMENT TO FOREGO RIGHTS; SETTLEMENT OF CLAIMS.....	4
Section 1-108. EFFECT OF ACT ON POWERS OF ORGANIZATIONS.....	5
Section 1-109. TRANSACTIONS SUBJECT TO ACT BY AGREEMENT.....	6
Section 1-110. RELATIONSHIP TO FEDERAL LAW.....	6
Section 1-111. RECORD RETENTION.....	6
Part 2. SCOPE AND JURISDICTION.....	7
Section 1-201. TERRITORIAL APPLICATION.....	7
Section 1-202. EXCLUSIONS.....	8
Section 1-203. JURISDICTION AND SERVICE OF PROCESS.....	11
Part 3. DEFINITIONS.....	11
Section 1-301. GENERAL DEFINITIONS.....	11
Section 1-302. DEFINITION: FEDERAL TRUTH IN LENDING ACT.....	21
Section 1-303. OTHER DEFINED TERMS.....	22

Maine Revised Statutes
Title 9-A: MAINE CONSUMER CREDIT CODE
Article 1: General Provisions and Definitions

Part 1: GENERAL PROVISIONS

§1-101. SHORT TITLE

This Act shall be known and may be cited as the "Maine Consumer Credit Code." [1973, c. 762, §1 (NEW).]

SECTION HISTORY
1973, c. 762, §1 (NEW).

§1-102. PURPOSES; RULES OF CONSTRUCTION

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.
[1973, c. 762, §1 (NEW) .]

2. The underlying purposes and policies of this Act are:

A. To simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury; [1973, c. 762, §1 (NEW).]

B. To provide rate ceilings to assure an adequate supply of credit to consumers; [1973, c. 762, §1 (NEW).]

C. To further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost; [1973, c. 762, §1 (NEW).]

D. To protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors; [1973, c. 762, §1 (NEW).]

E. To permit and encourage the development of fair and economically sound consumer credit practices; and [1973, c. 762, §1 (NEW).]

F. To conform the regulation of consumer credit transactions to the policies of the Federal Truth in Lending Act. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

3. A reference to a requirement imposed by this Act includes reference to a related rule of the administrator adopted pursuant to this Act.

[1973, c. 762, §1 (NEW) .]

SECTION HISTORY
1973, c. 762, §1 (NEW).

§1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause supplement its provisions. [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§1-104. CONSTRUCTION AGAINST IMPLICIT REPEAL

This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§1-105. SEVERABILITY

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§1-106. ADJUSTMENT OF DOLLAR AMOUNTS

(REPEALED)

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 623, §6 (AMD). 1985, c. 121, (AMD). 1985, c. 763, §§A15-17 (AMD). 1985, c. 819, §A9 (AMD). 1997, c. 727, §B1 (RP).

§1-107. WAIVER; AGREEMENT TO FOREGO RIGHTS; SETTLEMENT OF CLAIMS

1. Except as otherwise provided in this Act, a consumer may not waive or agree to forego rights or benefits under this Act. Any such waiver or agreement is unenforceable; and no creditor may take any such waiver or agreement to forego rights or benefits under this Act.

[1973, c. 762, §1 (NEW) .]

2. A claim by a consumer against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a consumer for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

[1973, c. 762, §1 (NEW) .]

3. A claim, whether or not disputed, against a consumer may be settled for less value than the amount claimed.

[1973, c. 762, §1 (NEW) .]

4. A settlement in which the consumer waives or agrees to forego rights or benefits under this Act is invalid if the court, as a matter of law, finds the settlement to have been unconscionable at the time it was made. The competence of the consumer, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him and the value of the consideration are relevant to the issue of unconscionability. Any claim of unconscionability must be raised in a judicial action within the earlier of:

A. Six years after the date of settlement; or [1987, c. 129, §1 (NEW) .]

B. The limitation period applicable to the original claim which was the subject of the settlement.
[1987, c. 129, §1 (NEW) .]

[1987, c. 129, §1 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1987, c. 129, §1 (AMD).

§1-108. EFFECT OF ACT ON POWERS OF ORGANIZATIONS

1. This Act prescribes maximum charges for all creditors, except lessors and those excluded, section 1-202, extending consumer credit including consumer credit sales, subsection 11 of section 1-301 and consumer loans subsection 14 of section 1-301, and displaces existing limitations on the powers of those creditors based on maximum charges.

[1973, c. 762, §1 (NEW) .]

2. With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

[1973, c. 762, §1 (NEW) .]

3. Except as provided in subsection 1, this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

[1973, c. 762, §1 (NEW) .]

4. Except as provided in subsections 1 and 2, this Act does not displace:

A. Limitations on powers of supervised financial organizations, subsection 38-A of section 1-301, with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or [1997, c. 66, §1 (AMD) .]

B. Limitations on powers an organization is authorized to exercise under the laws of this State or the United States. [1973, c. 762, §1 (NEW) .]

[1997, c. 66, §1 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1997, c. 66, §1 (AMD).

§1-109. TRANSACTIONS SUBJECT TO ACT BY AGREEMENT

The parties to a sale, lease or loan, or modification thereof, which is not a consumer credit transaction, may agree in a writing signed by the parties that the transaction is subject to the provisions of this Act applying to consumer credit transactions. If the parties so agree, the transaction is a consumer credit transaction for the purposes of this Act. [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

§1-110. RELATIONSHIP TO FEDERAL LAW

Notwithstanding the provisions of Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, the Legislature declares that the maximum finance charges established in article II apply to: [1995, c. 137, §1 (AMD).]

1. Consumer credit transactions involving manufactured housing as defined in section 1-301, subsection 23-A; and

[1995, c. 137, §2 (AMD) .]

2.

[1995, c. 137, §3 (RP) .]

3. First lien mortgages on real estate granted by a creditor subject to licensing by the administrator as set out in section 2-301.

[1981, c. 218, (NEW) .]

The Legislature declares that the preemption provided by the United States Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320, Section 804, shall not apply. The Legislature further declares that the applicable provisions of the Maine Consumer Credit Code relating to alternative mortgage instruments shall apply, including, but not limited to, sections 3-308 and 3-310. [1983, c. 307, §1 (NEW) .]

SECTION HISTORY

1981, c. 218, (NEW). 1983, c. 307, §1 (AMD). 1983, c. 720, §1 (AMD). 1987, c. 129, §2 (AMD). 1993, c. 134, §1 (AMD). 1995, c. 137, §§1-3 (AMD).

§1-111. RECORD RETENTION

Every person subject to this Act shall maintain records of all consumer credit transactions in conformity with generally accepted accounting principles and practices or in a manner that will enable the administrator to determine whether that person or his assignee is complying with the provisions of this Act. The records need not be kept in the place of business where the transaction was entered into, if the administrator is given free access to the records, wherever located. All records pertaining to consumer credit transactions shall be retained for at least 2 years after making the final entry on the account involved, except that in the case of open-end credit, the 2 years shall be measured from the date of each account entry. [1987, c. 129, §3 (AMD) .]

SECTION HISTORY

1985, c. 336, §1 (NEW). 1987, c. 129, §3 (AMD).

Part 2: SCOPE AND JURISDICTION

§1-201. TERRITORIAL APPLICATION

1. Except as otherwise provided in this section, this Act applies to consumer credit transactions and open-end credit plans made or entered into in this State. For purposes of this Act, a consumer credit transaction or open-end credit plan is made or entered into in this State if:

A. A signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; [2005, c. 604, §1 (AMD).]

B. The creditor, wherever located, induces the consumer who is a resident of this State to enter into the transaction or open-end credit plan by face-to-face, mail, telephone or electronic mail solicitation in this State; or [2005, c. 604, §1 (AMD).]

C. With respect to a payday loan, the lender, wherever located, enters into a payday loan transaction with a consumer who is located in this State. [2005, c. 604, §1 (NEW).]

[2005, c. 604, §1 (AMD) .]

2.

[1987, c. 129, §5 (RP) .]

3. The Part on Limitations on Creditors' Remedies, Part 1, of the Article on Remedies and Penalties, Article 5, applies to actions, other proceedings and nonjudicial collection activity conducted in this State to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

[1987, c. 129, §6 (AMD) .]

4. A consumer credit transaction made in another state to a person who is a resident of this State at the time of the transaction is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of the state applicable to the transaction, but the following provisions apply as though the transaction occurred in this State:

A. A creditor may not collect charges through actions or other proceedings in excess of those permitted by the Article on Finance Charges and Related Provisions (Article 2) and by the Article on Insurance (Article 4); and [1973, c. 762, §1 (NEW).]

B. A creditor may not enforce rights against the consumer with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 3) and Limitations on Consumer's Liability (Part 4) of the Article on Regulation of Agreements and Practices (Article 3). [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

5. Except as provided in subsection 3, a consumer credit transaction made in another state to a person who was not a resident of this State when the sale, lease, loan, or modification was made is valid and enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

[1973, c. 762, §1 (NEW) .]

6. For the purposes of this Act, the residence of a consumer is the address given by him as his residence in any writing signed by him in connection with a credit transaction or open-end credit plan. Until he notifies the creditor of a new or different address in a writing for that purpose, the given address is presumed to be unchanged.

[1987, c. 129, §7 (AMD) .]

7. Notwithstanding other provisions of this section:

A. Except as provided in subsection 3, this Act does not apply if the consumer is not a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies; and [1973, c. 762, §1 (NEW).]

B. This Act applies if the consumer is a resident of this State at the time of a credit transaction and the parties have agreed that the law of his residence applies. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

8. Except as provided in subsection 7, the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit transactions to which this Act applies:

A. That the law of another state shall apply; [1973, c. 762, §1 (NEW).]

B. That the consumer consents to the jurisdiction of another state; and [1973, c. 762, §1 (NEW).]

C. That fixes venue. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

9. The following provisions of this Act specify the applicable law governing certain cases:

A. Applicability, section 6-102, of the Part on Powers and Functions of Administrator, Part 1, of the Article on Administration, Article 6; and [1973, c. 762, §1 (NEW).]

B. Applicability, section 6-201, of the Part on Notification and Fees, Part 2, of the Article on Administration, Article 6. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

10. Notwithstanding any other provision of law, this Act applies to any person offering, arranging or purporting to offer or arrange a consumer credit transaction if that person, in advertising or soliciting or otherwise communicating with a consumer, asserts to be located in this State or to possess a license or registration issued pursuant to this Act.

[2005, c. 206, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 658, (AMD). 1987, c. 129, §§4-7 (AMD). 2001, c. 371, §1 (AMD). 2005, c. 206, §1 (AMD). 2005, c. 604, §1 (AMD).

§1-202. EXCLUSIONS

This Act does not apply to: [1973, c. 762, §1 (NEW).]

1. Extensions of credit primarily for business, commercial or agricultural purposes or from governments or governmental agencies, instrumentalities or organizations;

[1987, c. 396, §1 (AMD) .]

1-A. Transactions for which the administrator, by rule, determines that coverage under this Title is not necessary to carry out the purposes of this Title;

[1997, c. 155, Pt. C, §1 (NEW) .]

2. Except as otherwise provided in the Article on Insurance (Article 4), the sale of insurance by an insurer if the insured is not obliged to pay instalments of the premium and the insurance may terminate or be cancelled after nonpayment of an instalment of the premiums;

[1973, c. 762, §1 (NEW) .]

3. An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, radio or similar transmission, including extensions of these facilities, if the charges for service, delayed payments or any discounts for prompt payment are filed with or regulated by any subdivision or agency of this State or of the United States. This exemption does not apply to financing of goods or home improvements by a public utility;

[1987, c. 129, §9 (RPR) .]

4. Ceilings on rates and charges or limits on loan maturities of a credit union organized under the laws of this State or of the United States if these ceilings or limits are established by these laws;

[1979, c. 127, §51 (AMD) .]

5. Ceilings on rates and charges of a licensed pawnbroker if these ceilings are established by statute;

[1973, c. 762, §1 (NEW) .]

6. Transactions in securities or commodities accounts with a broker-dealer registered with either the Securities and Exchange Commission or the Commodities Futures Trading Commission;

[1979, c. 127, §52 (AMD) .]

7. A loan or consumer credit sale made exclusively for the purpose of deferring or financing educational expenses and on which the finance charge does not exceed that rate per year on the unpaid balances of the amount financed, as established by federal law, or, for loans or consumer credit sales for which federal law does not establish a rate, the highest rate established for educational loans under any federal program and which is insured, guaranteed, subsidized or made directly by the Federal Government, a state, a nonprofit private loan guaranty or organization, by the educational institution itself or through an endowment or trust fund affiliated with such an institution;

[2005, c. 55, §1 (AMD) .]

8. A loan or credit sale made by a creditor to finance or refinance the acquisition of real estate or the initial construction of a dwelling, or a loan made by a creditor secured by a first mortgage on real estate, if the security interest in real estate is not made for the purpose of circumventing or evading this Act, provided that:

A. With respect to advances of additional funds on the loan or credit sale made more than 30 days after the initial advance, this exclusion applies only to advances made:

- (1) Pursuant to the terms of a construction financing agreement;
- (2) To protect the security or to perform the covenants of the consumer;
- (3) As negative amortization of principal under the terms of the financing agreement;

(4) From funds withheld at consummation pending the resolution of matters that otherwise would tend to delay or prevent closing, including, without limitation, remedy of title defects or repairs to meet appraisal standards; or

(5) Pursuant to the terms of a reverse mortgage transaction, as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq., if the transaction is made pursuant to a commitment to purchase issued by, or is in a form approved for purchase by, any state or federal agency, instrumentality or government-sponsored enterprise, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; [2011, c. 427, Pt. D, §1 (AMD).]

B. The exemption provided by this subsection does not apply to the requirements on servicing of assigned supervised loans, section 2-310; and [1987, c. 129, §11 (NEW).]

C. With respect to a creditor other than a supervised financial organization, the exemption provided by this subsection applies to Articles 2, 3, 4 and 5 only; or [2005, c. 55, §2 (AMD).]

[2011, c. 427, Pt. D, §1 (AMD) .]

8-A.

[1987, c. 129, §12 (RP) .]

9.

[1979, c. 541, §87 (RP) .]

10. A no-interest loan or credit sale by a nonprofit organization that assists in building or renovating housing for those in need. The exclusion in this subsection does not apply to Article 6, Part 1; section 6-201; section 6-202; section 6-203, subsection 1; section 6-204; or Article 8-A.

[2011, c. 427, Pt. D, §2 (AMD) .]

The exclusions set forth in subsection 1 relating to extensions of credit to consumers by governments or governmental agencies, instrumentalities or organizations, and in subsections 2, 4, 5, 7 and 8, do not apply to the Maine Consumer Credit Code, Truth-in-lending, Article 8-A. [2011, c. 427, Pt. D, §3 (AMD).]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 318, (AMD). 1975, c. 413, (AMD). 1975, c. 446, §3 (AMD). 1977, c. 696, §112 (AMD). 1979, c. 127, §§51-56 (AMD). 1979, c. 541, §§A85-A88 (AMD). 1979, c. 660, §§1-3 (AMD). 1981, c. 243, §§1,2,26 (AMD). 1981, c. 551, §3 (AMD). 1981, c. 618, §1 (AMD). 1981, c. 638, §1 (AMD). 1983, c. 212, §§1,2 (AMD). 1983, c. 641, §1 (AMD). 1983, c. 720, §2 (AMD). 1985, c. 336, §2 (AMD). 1987, c. 129, §§8-12 (AMD). 1987, c. 396, §§1-3 (AMD). 1997, c. 64, §1 (AMD). 1997, c. 155, §C1 (AMD). 2005, c. 55, §§1-3 (AMD). 2007, c. 273, Pt. C, §1 (AMD). 2007, c. 471, §1 (AMD). 2007, c. 471, §18 (AFF). 2011, c. 427, Pt. D, §§1-3 (AMD).

§1-203. JURISDICTION AND SERVICE OF PROCESS

1. The Superior and District Courts of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the Superior and District Courts by the service of process in the manner provided by this section.

[1973, c. 762, §1 (NEW) .]

2. If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

[1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW) .

Part 3: DEFINITIONS

§1-301. GENERAL DEFINITIONS

In addition to definitions appearing in subsequent Articles, in this Act: [1973, c. 762, §1 (NEW) .]

1. "Actuarial method" means the method, defined by rules adopted by the administrator, of allocating payments made on debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed.

[1973, c. 762, §1 (NEW) .]

2. "Administrator" means, except in cases in which a supervised financial organization is the creditor, the administrator designated in Article VI, section 6-103. In cases in which a supervised financial organization is the creditor, "administrator" means the Superintendent of Financial Institutions.

[2001, c. 44, §1 (AMD); 2001, c. 44, §14 (AFF) .]

2-A. "Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a consumer credit transaction.

[1987, c. 129, §13 (NEW) .]

3. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

[1973, c. 762, §1 (NEW) .]

4. "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

[1973, c. 762, §1 (NEW) .]

5. "Amount financed" means the amount of credit of which the consumer has actual use and is computed pursuant to section 2-501 and the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[2011, c. 427, Pt. D, §4 (AMD) .]

5-A.

[1989, c. 70, §1 (RP) .]

6. "Billing cycle" or "cycle" means the interval between days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval shall be considered equal if the number of days in the cycle does not vary more than 4 days from the regular day or date of the periodic statement.

[1987, c. 129, §15 (RPR) .]

6-A. "Business day" means a day on which a creditor's offices are open to the public for carrying on substantially all of its business functions. For purposes of rescission, the term means all calendar days, except Sundays and the holidays established by Title 9-B, section 145, subsection 1.

[1997, c. 398, Pt. L, §4 (AMD) .]

6-B. "Cardholder" means the same as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[2011, c. 427, Pt. D, §5 (AMD) .]

6-C. "Card issuer" means the same as defined in the Federal Truth in Lending Act, 15 United States Code, Section 1601 et seq.

[2011, c. 427, Pt. D, §5 (AMD) .]

7. "Cash price" means the price at which the creditor, in the ordinary course of business, offers to sell for cash the property or service that is the subject of the transaction. The term includes charges imposed by the creditor equally on cash and credit customers. It may include the price of optional accessories, services related to the sale, service contracts and taxes and fees for license, title and registration. The term does not include any finance charge.

[1981, c. 243, §4 (RPR) .]

8. "Closing costs," provided they are bona fide, reasonable in amount and not for the purpose of circumvention or evasion of this Act, with respect to a debt or open-end credit plan secured by an interest in land or a consumer credit transaction involving manufactured housing, include:

A. Fees or premiums for title examination, abstract of title, title insurance or similar purposes and for required related property surveys; [1975, c. 324, §1 (RPR) .]

B. Fees for preparation of deeds, settlement statements or other documents; [1975, c. 324, §1 (RPR).]

C. Amounts required to be placed or paid into an escrow or trustee account for future payments if the amounts would not otherwise be included in the finance charge; [1987, c. 129, §17 (AMD).]

D. Fees for notarizing deeds and other documents; [1975, c. 324, §1 (RPR).]

E. Appraisal fees; and [1975, c. 324, §1 (RPR).]

F. Credit reports. [1975, c. 324, §1 (RPR).]

[1987, c. 129, §17 (AMD) .]

9. "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

[1973, c. 762, §1 (NEW) .]

10. "Consumer" means a cardholder or a natural person to whom consumer credit is offered or extended and includes a cosigner. The term includes a natural person who enters into a consumer lease. For purposes of rescission, the term includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest.

[1987, c. 129, §18 (RPR) .]

11. "Consumer credit sale":

A. A "consumer credit sale" is a sale of goods, services or an interest in land in which:

(1) Credit is granted either pursuant to a credit card other than a lender credit card or by a seller who regularly engages as a seller in credit transactions of the same kind;

(2) The buyer is a person other than an organization;

(3) The goods, services or interest in land are purchased primarily for a personal, family or household purpose;

(4) Either the debt is payable in installments or a finance charge is made;

(5) With respect to a sale of goods or services, not including manufactured housing or a motor vehicle, the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203; and

(6) With respect to a sale of a motor vehicle as defined in Title 29-A, section 101, subsection 42, the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

The amounts set out in subparagraphs (5) and (6) are automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act. [2011, c. 427, Pt. A, §1 (AMD).]

B. [1987, c. 396, §5 (RP).]

C. [1985, c. 763, §18 (RP).]

[2011, c. 427, Pt. A, §1 (AMD) .]

12. "Consumer credit transaction" means a consumer credit sale, consumer lease or consumer loan or a modification thereof including a refinancing, consolidation or deferral.

[1973, c. 762, §1 (NEW) .]

13. A "consumer lease" is a lease of goods:

A. That a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family or household purpose; [2011, c. 427, Pt. A, §2 (AMD) .]

B. In which the amount payable under the lease does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203. The exempt transaction amount in this paragraph is automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 181, subsection (1) and any rules adopted pursuant to that Act; [2011, c. 427, Pt. A, §2 (AMD) .]

C. That is for a term exceeding 4 months; and [2011, c. 427, Pt. A, §2 (AMD) .]

D. That is not made pursuant to a lender credit card.

A person is regularly engaged in the business of leasing if the person enters into consumer leases more than 25 times in the preceding calendar year. If a person did not meet this numerical test in the preceding calendar year, the numerical standard must be applied to the current calendar year. [2011, c. 427, Pt. A, §2 (AMD) .]

[2011, c. 427, Pt. A, §2 (AMD) .]

14. "Consumer loan":

A. Except as provided in paragraph B, a "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (1) The debtor is a person other than an organization;
- (2) The debt is incurred primarily for a personal, family or household purpose;
- (3) Either the debt is payable in installments or a finance charge is made; and
- (4) For loans made by:
 - (a) A supervised financial organization, either the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, or the debt is secured by manufactured housing or an interest in land; or
 - (b) A supervised lender other than a supervised financial organization, either the amount financed does not exceed \$50,000, consistent with Title X of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, or the debt is secured by manufactured housing or an interest in land.

The exempt transaction amount in divisions (a) and (b) are automatically adjusted to correspond with any inflation adjustment made to the exempt transaction amount referenced in the Federal Truth in Lending Act, Section 104, subsection (3) and any rules adopted pursuant to that Act. [2011, c. 427, Pt. A, §3 (AMD) .]

B. "Consumer loan" does not include:

(1) A sale or lease in which the seller or lessor allows the buyer or lessee to purchase or lease pursuant to a credit card other than a lender credit card. [2001, c. 371, §14 (AFF); 2001, c. 371, §2 (RPR).]

[2011, c. 427, Pt. A, §3 (AMD) .]

14-A. "Cosigner" means a natural person who assumes personal liability for the obligation of a consumer without receiving goods, services or money in return for the obligation or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition of forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person who meets the definition of this subsection is a cosigner whether or not the person is designated as such on the credit obligation. The term does not include a person who becomes liable in a transaction to finance or refinance the acquisition or initial construction of real property.

[1987, c. 129, §21 (NEW) .]

15. "Credit" means the right granted by a creditor to a consumer to defer payment of an obligation, to incur an obligation and defer its payment or to obtain possession of property or the benefit of services and defer payment therefor pursuant to an agreement which includes, but is not limited to, a sale of goods, a sale of an interest in land, a sale of services or a loan.

[1983, c. 720, §3 (RPR) .]

16. "Credit card" means any card, plate, coupon book or other single credit device that may be used from time to time to obtain credit.

[1987, c. 129, §22 (RPR) .]

17. "Creditor" means a person who both:

A. Regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit that is payable by agreement in more than 4 installments or for which the payment of a finance charge is or may be required; and [2011, c. 427, Pt. A, §4 (RPR).]

B. Is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement; except that, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount that is a finance charge are creditors. [2011, c. 427, Pt. A, §4 (RPR).]

For the purpose of the requirements imposed under Article 8-A for credit billing pursuant to 15 United States Code, Section 1666 et seq. and for open-end consumer credit pursuant to 15 United States Code, Section 1637(a)(5), (a)(6), (a)(7), (b)(1), (b)(2), (b)(3), (b)(8) and (b)(10), "creditor" also includes card issuers whether or not the amount due is payable by agreement in more than 4 installments or the payment of a finance charge is or may be required and the administrator shall by regulation apply these requirements to those card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

For the purposes of this Title, "creditor" also includes any person who originates 2 or more mortgages referred to as high-cost mortgage loans under Article 8-A, section 8-506 in any 12-month period or any person who originates one or more such mortgage loans through a mortgage broker as defined in Article 8-A, section 8-506, subsection 1, paragraph J, or a loan broker as defined in Article 10.

For purposes of this Title, "creditor" also includes a private educational lender as that term is defined in 15 United States Code, Section 1650.

A person regularly extends consumer credit only if the person extended credit other than credit subject to high-cost mortgage loan requirements more than 25 times or more than 5 times for transactions secured by a dwelling in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards must be applied to the current calendar year.

[2011, c. 427, Pt. A, §4 (RPR) .]

17-A. Debit card. "Debit card" has the same meaning as in Title 10, section 1271, subsection 3.

[2009, c. 618, §1 (NEW) .]

18. "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

[1973, c. 762, §1 (NEW) .]

19. "Finance charge" means the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

A. Except for charges specifically excluded by paragraph B, the term includes:

- (1) Interest, time price differential and any amount payable under an add-on or discount system of additional charges;
 - (2) Service, transaction, activity and carrying charges and early withdrawal penalties on time deposit accounts, including any charge imposed on a checking or other deposit account to the extent that the charge exceeds the charge for a similar account without a credit feature;
 - (3) Points, loan fees, assumption fees, finder's fees and similar charges;
 - (4) Appraisal, investigation and credit report fees;
 - (5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss;
 - (6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation or as a deduction from the proceeds of the obligation;
 - (7) Premiums or other charges for credit life, accident, health or loss-of-income insurance or insurance against loss of or damage to property or against liability arising out of the ownership or use of property, written in connection with a credit transaction, unless the applicable requirements of section 2-501 and Article 8-A are met; and
 - (8) Discounts for the purpose of inducing payment by a means other than the use of credit.
- [2011, c. 427, Pt. D, §6 (AMD) .]

B. The term does not include:

- (1) Application fees charged to all applicants for credit, whether or not credit is actually extended;
- (2) Charges as a result of default, additional charges, delinquency charges or deferral charges to the extent permitted by section 2-501, 2-502 or 2-503;
- (3) Charges for actual unanticipated late payment in a transaction that is not otherwise subject to a finance charge or payable in installments;

- (4) Charges imposed by a financial institution for paying or returning an item that overdraws an account, except where the charge is imposed pursuant to a written agreement to extend credit to fund overdrafts;
- (5) Fees permitted by section 2-501 to be charged for participation in a credit plan, whether assessed on an annual or other periodic basis;
- (6) Seller's points;
- (7) Closing costs as defined in subsection 8;
- (8) The discount, when a creditor purchases or satisfies obligations of a cardholder pursuant to a credit card and the purchase or satisfaction is made at less than the face amount of the obligation;
- (9) Any discount offered by a creditor or seller for the purpose of inducing payment by cash, check or other means to be made at the time of sale not involving the use of a credit card, if that discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously; and
- (10) Official fees as defined in subsection 25, if they are itemized and disclosed. [1987, c. 129, §24 (RPR).]

[2011, c. 427, Pt. D, §6 (AMD) .]

20. "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title and instruments. For purposes of sections 5-110 and 5-111, goods that are collateral shall include any right of set-off that the creditor may have.

[1977, c. 159, §1 (AMD) .]

20-A. Institution of higher education.

[1983, c. 641, §2 (RP) .]

20-B. "Insurance premium loan" means a consumer loan that:

- A. Is made for the sole purpose of financing the payment by or on behalf of an insured of the premium on one or more policies or contracts issued by or on behalf of an insurer; [1985, c. 763, Pt. A, §20 (NEW).]
- B. Is secured by an assignment by the insured to the lender of the unearned premium on the policy or contract; and [1985, c. 763, Pt. A, §20 (NEW).]
- C. Contains an authorization to cancel the policy or contract financed. [1985, c. 763, Pt. A, §20 (NEW).]

[1985, c. 763, Pt. A, §20 (NEW) .]

21.

[1987, c. 129, §25 (RP) .]

22. "Lender credit card" means a credit card issued by a supervised lender. The term does not include any device to the extent that it accesses a bona fide asset account, notwithstanding any overdraft or other line of credit agreement which may be accessed as a result of a debit to that asset account.

[1987, c. 129, §26 (RPR) .]

22-A.

[2011, c. 427, Pt. B, §1 (RP) .]

23. "Loan":

A. Except as provided in paragraph B, a "loan" includes:

- (i) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;
- (ii) the creation of debt either pursuant to a lender credit card or by a cash advance to a debtor pursuant to a credit card other than a lender credit card;
- (iii) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately; and
- (iv) the forbearance of debt arising from a loan. [1973, c. 762, §1 (NEW) .]

B. A "loan" does not include the payment or agreement to pay money to a third party for the account of a debtor if the debt of the debtor arises from a sale or lease and results from use of a credit card issued by a person primarily in the business of selling or leasing goods or services. [1987, c. 129, §27 (AMD) .]

[1987, c. 129, §27 (AMD) .]

23-A. "Manufactured housing" means manufactured housing as defined in Title 10, section 9002, subsection 7.

[1987, c. 129, §28 (NEW) .]

24. "Merchandise certificate" means a writing not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

[1973, c. 762, §1 (NEW) .]

24-A.

[1987, c. 129, §29 (RP) .]

24-B. "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

- A. An individual engaged solely as a loan processor or underwriter except as otherwise provided in section 13-103, subsection 3, paragraph A; [2011, c. 427, Pt. B, §2 (NEW) .]
- B. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with the laws of this State, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker or other mortgage loan originator; or [2011, c. 427, Pt. B, §2 (NEW) .]
- C. A person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 United States Code, Section 101(53D). [2011, c. 427, Pt. B, §2 (NEW) .]

For the purposes of Articles 2, 3, 6, 9 and 10, mortgage loan originator does not include a registered mortgage loan originator as defined in section 13-102, subsection 12.

[2011, c. 427, Pt. B, §2 (NEW) .]

25. "Official fees" means:

A. Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit transaction; or [1973, c. 762, §1 (NEW).]

B. Premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph A which would otherwise be payable. [1973, c. 762, §1 (NEW).]

[1973, c. 762, §1 (NEW) .]

26. "Open-end credit" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of those transactions and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open-end credit plan within the meaning of the preceding sentence is an open-end credit plan, even if credit information is verified from time to time.

[1981, c. 243, §13 (RPR) .]

27. "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

[1973, c. 762, §1 (NEW) .]

28. "Payable in installments" means that payment is required or permitted by agreement to be made in more than 4 periodic payments, excluding the down payment.

[1981, c. 243, §14 (RPR) .]

28-A. "Payday loan" means a supervised loan or other credit transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check or in exchange for the consumer's authorization to debit the consumer's deposit account and when the parties agree either that the check will not be cashed or deposited or that the consumer's deposit account will not be debited until a designated future date.

[2005, c. 604, §2 (NEW) .]

29. "Person" includes a natural person or an individual, and an organization.

[1973, c. 762, §1 (NEW) .]

30. "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

[1973, c. 762, §1 (NEW) .]

31. "Precomputed": A finance charge or consumer credit transaction other than a consumer lease is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the finance charge computed in advance.

[1973, c. 762, §1 (NEW) .]

31-A. "Retail credit card" means a credit card issued by a seller who is not a supervised lender and who regularly engages as a seller in credit transactions of the same kind.

[1995, c. 84, §1 (NEW) .]

32.

[1987, c. 129, §30 (RP) .]

33. "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee pays, will pay or agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with the terms of the agreement, including any optional renewals thereof.

[1983, c. 720, §5 (AMD) .]

34. "Sale of an interest in land" includes, but is not limited to, a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

[1973, c. 762, §1 (NEW) .]

35. "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

[1973, c. 762, §1 (NEW) .]

36.

[1987, c. 129, §30 (RP) .]

37. "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, rental of vehicles other than a consumer lease, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations and the like, and (c) insurance.

[1973, c. 762, §1 (NEW) .]

38.

[1997, c. 66, §2 (RP) .]

38-A. "Supervised financial organization" means:

A. A financial institution as defined in Title 9-B, section 131; or [1997, c. 66, §3 (NEW) .]

B. A person, other than an insurance company or other organization primarily engaged in an insurance business, that is subject to the supervision by an official or agency of a state or of the United States and is:

(1) Organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the person both to make loans and to receive deposits, including a savings, share, certificate or deposit account; or

(2) A nondepository trust company, uninsured bank or merchant bank organized, chartered or holding an authorization certificate under the laws of a state or of the United States that authorizes the limited-purpose financial institution to make loans. [2001, c. 371, §3 (AMD) .]

[2001, c. 371, §3 (AMD) .]

39. "Supervised lender" means a person authorized to make or take assignments of supervised loans, either under a license issued by the Administrator (section 2-301), or as a supervised financial organization (section 1-301, subsection 38-A).

[1997, c. 66, §4 (AMD) .]

40. "Supervised loan" means a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12 1/4% per year, or which is secured by an interest in real estate.

[1987, c. 396, §8 (AMD) .]

41. "Provisions on disclosure" includes Article 8-A, rules adopted pursuant to that Article and the Federal Truth in Lending Act, as applicable.

[2011, c. 427, Pt. D, §7 (AMD) .]

SECTION HISTORY

1973, c. 762, §1 (NEW). 1975, c. 63, (AMD). 1975, c. 251, (AMD). 1975, c. 324, §§1,2 (AMD). 1975, c. 350, §§1,2 (AMD). 1975, c. 770, §§47-49 (AMD). 1977, c. 159, §1 (AMD). 1977, c. 696, §113 (AMD). 1979, c. 660, §§4,5 (AMD). 1981, c. 235, §1 (AMD). 1981, c. 243, §§3-14,26 (AMD). 1981, c. 551, §3 (AMD). 1981, c. 618, §2 (AMD). 1981, c. 698, §18 (AMD). 1983, c. 641, §2 (AMD). 1983, c. 720, §§3-5 (AMD). 1985, c. 763, §§A18-20 (AMD). 1987, c. 129, §§13-30 (AMD). 1987, c. 396, §§4-8 (AMD). 1989, c. 70, §1 (AMD). 1995, c. 84, §1 (AMD). 1995, c. 309, §5 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 326, §1 (AMD). 1997, c. 66, §§2-4 (AMD). 1997, c. 122, §1 (AMD). 1997, c. 398, §L4 (AMD). 1997, c. 727, §B2 (AMD). 2001, c. 44, §1 (AMD). 2001, c. 44, §14 (AFF). 2001, c. 371, §§2,3 (AMD). 2001, c. 371, §14 (AFF). 2005, c. 164, §1 (AMD). 2005, c. 274, §1 (AMD). 2005, c. 604, §2 (AMD). 2005, c. 683, §B2 (AMD). 2009, c. 618, §1 (AMD). 2011, c. 427, Pt. A, §§1-4 (AMD). 2011, c. 427, Pt. B, §§1, 2 (AMD). 2011, c. 427, Pt. D, §§4-7 (AMD).

§1-302. DEFINITION: FEDERAL TRUTH IN LENDING ACT

In this Act, "Federal Truth in Lending Act" means Title I of the Consumer Credit Protection Act, (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act. [1973, c. 762, §1 (NEW) .]

SECTION HISTORY

1973, c. 762, §1 (NEW) .

§1-303. OTHER DEFINED TERMS

Other definitions appearing in this Act and the sections in which they appear are:

"Computational period" Section 2-510

"Interval" Section 2-510

"Location" Section 2-309

"Periodic balance" Section 2-510 [1973, c. 762, §1 (NEW).]

SECTION HISTORY

1973, c. 762, §1 (NEW).

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